

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**FILED**

10/27/22

01:38 PM

A2111010

October 27, 2022

**Agenda ID #21087
and
Alternate Agenda ID #21088
Ratesetting**

TO PARTIES OF RECORD IN APPLICATION 21-11-010:

Enclosed are the proposed decision of Administrative Law Judge Karl J. Bemesserfer previously designated as the presiding officer in this proceeding and the alternate proposed decision of Commissioner Darcie L. Houck. The proposed decision and the alternate proposed decision will not appear on the Commission's agenda sooner than 30 days from the date they are mailed.

Public Utilities (Pub. Util.) Code Section 311(e) requires that the alternate item be accompanied by a digest that clearly explains the substantive revisions to the proposed decision. The digest of the alternate proposed decision is attached.

This matter was categorized as ratesetting and is subject to Pub. Util. Code Section 1701.3(c). Upon the request of any Commissioner, a Ratesetting Deliberative Meeting (RDM) may be held. If that occurs, the Commission will prepare and publish an agenda for the RDM three days beforehand. When an RDM is held, there is a related *ex parte* communications prohibition period. (See Rule 8.2(c)(4) of the Commission's Rules of Practice and Procedure (Rules).)

When the Commission acts on these agenda items, it may adopt all or part of the decision as written, amend or modify them, or set them aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision and alternate decision as provided in Pub. Util. Code Sections 311(d)-(e) and in Article 14 of the Commission's Rules of Practice and Procedure, accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 and served in accordance with Rule 1.9 and Rule 1.10. Electronic copies of comments should be sent to Commissioner Houck's advisor Eileen Odell at eileen.odell@cpuc.ca.gov. The current service list for this proceeding is available on the Commission's website at www.cpsc.ca.gov.

/s/ MICHELLE COOKE _____
Michelle Cooke
Chief Administrative Law Judge

MLC:nd3
Attachment

*DIGEST OF DIFFERENCES BETWEEN ADMINISTRATIVE LAW JUDGE
KARL J. BEMESDERFER'S PROPOSED DECISION AND THE ALTERNATE
PROPOSED DECISION OF COMMISSIONER HOUCK*

The alternate proposed decision finds that Zenith is a public utility based on interpretation of whether Zenith is a pipeline corporation, as defined in Public Utilities Code Section 228: "'Pipeline corporation' includes every person owning, controlling, operating, or managing any pipeline for compensation within this state."

The proposed decision grants Zenith's request to remove its designation as a public utility.

The alternate proposed decision denies Zenith's request to remove its designation as a public utility. The alternate proposed decision concludes that since Zenith manages and controls its pipeline system to transport and store oil products for others, the pipeline system is a pipeline corporation. Zenith owns and operates approximately 120 miles of pipelines in the Los Angeles area which carry oil owned by third parties, primarily oil producers, to and from its terminal in Carson. While Zenith claims it does not charge its customers a separate fee for transporting their oil in its pipelines, it is reasonable to assume that the costs of transportation are reflected in the compensation Zenith receives for storing the oil.

The alternate proposed decision also finds that the pipeline system in question was deemed a public utility in 1994, well after the warehouseman statute was repealed in 1980. Had the legislature wanted to exempt companies like Zenith from Commission jurisdiction, it could have made that clear amending the definition of pipeline.

Finally, the alternate proposed decision notes that there are sound policy reasons for denying this application. As the legislative history referenced in Zenith's application makes clear, the determination of whether an economic activity is within the Commission's jurisdiction is a question for the legislature.

ATTACHMENT

Decision **PROPOSED DECISION OF ALJ BEMESDERFER (Mailed 10/27/2022)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application by Zenith Energy West
Coast Terminals LLC (PLC-28) to
Remove Public Utility Designation.

Application 21-11-010

DECISION GRANTING APPLICATION

Summary

This decision grants the Application of Zenith Energy West Coast Terminals LLC to have its designation as a public utility removed and closes this proceeding.

1. Background

Zenith Energy West Coast Terminals LLC (PLC-28) (Zenith or Applicant) operates an oil storage terminal in Carson, CA (Terminal or Carson terminal). The Terminal provides oil storage and transportation service to third-party users pursuant to the terms of a Commission-approved tariff which allows for negotiated contracts between the Terminal and its customers. The Terminal's facilities include 120 miles of pipeline with connections to a marina berth at the Port of Long Beach and to Los Angeles area refineries and associated pumping and heating stations. Oil is moved in the Zenith-owned pipelines between the Terminal and these locations as well as in and out of storage tanks located at the Terminal. The Zenith-owned pipelines may also interconnect with (public or

private) oil pipelines owned or operated by third parties. According to Zenith, it does not charge for transportation of third-party oil to or from the Terminal or from one storage tank to another within the Terminal.

Prior to its purchase by Zenith in 2020, the Terminal was owned and operated by Plains All American Pipeline, L.P. (Plains), a Commission-regulated pipeline corporation. The Terminal was incidental to Plains' primary business, the transportation for a fee of third-party oil but, as part of a Commission-regulated pipeline corporation, the Terminal was also designated as a public utility. The Terminal retained its public utility designation after the sale to Zenith, which was approved by the Commission in Decision (D.) 20-08-008 without objection from Zenith.

After purchasing the Terminal from Plains, Zenith filed this application to have its public utility designation removed. There were no protests to the application.

A prehearing conference was held on January 11, 2022. The assigned Commissioner Darcie L. Houck issued the scoping memo and ruling (Scoping Ruling) on February 14, 2022, identifying the following issues:

- (1) Does the Application meet all statutory and Commission requirements — including Public Utilities (Pub. Util.) Code Sections 216, 227, and 228 — such that the Commission may grant Zenith Terminals' request to remove its public utility designation?
- (2) Would removal of Zenith Terminals' public utility designation be in the public interest such that the Commission should grant Zenith Terminals' request?
- (3) Will any proposal in the Application have any negatively impacts on any environmental and social justice community? If so, could those impacts, if any, be remediated to achieve any of the nine goals of the

Commission's Environmental and Social Justice Action
Plan?

- (4) Does any proposal in the raise any safety issues or concerns?

To address these issues, Section 5 of the Scoping Ruling, directed Zenith to answer four specific questions regarding its operation of the Terminal to inform the record. Zenith provided answers to all four questions in a response filed on February 28, 2022. The responses were supplemented by three confidential exhibits accompanied by a motion for confidential treatment. In an e-mail dated August 3, 2022, the Administrative Law Judge (ALJ) confirmed to Zenith that its responses were complete and pursuant to the terms of the Scoping Ruling, the matter stands submitted as of August 3, 2022.

2. Issue Before the Commission

The central issue before the Commission, which is informed by the record of this proceeding and subsumes the four scoped issues in this proceeding, is whether Zenith is a public utility as defined in Pub. Util. Code Section 216(a)(1):

“Public utility” includes every... pipeline corporation...
where the service is performed for... the public or any portion
thereof.

3. Discussion and Analysis

To be a public utility as defined, Zenith must be a pipeline corporation, as defined in Pub. Util. Code Section 228:

“Pipeline corporation” includes every person owning,
controlling, operating, or managing any pipeline **for**
compensation within this state.

Finally, what the corporation owns, controls, operates or manages must meet the definition of a pipeline in Pub. Util. Code Section 227:

“Pipe line” includes all real estate, fixtures, and personal
property, owned, controlled, or managed in connection with

or to facilitate the transmission, storage, distribution or delivery of crude oil...”

Given that Zenith merely owns and operates pipelines incidental to its terminaling and storage operations, a broad interpretation of Pub. Util. Code Sections 227-228 based on the plain meaning of the text might suggest that Zenith is a pipeline corporation. However, such a reading could result in an absurd outcome. Specifically, a similarly broad reading of the plain meaning of Pub. Util. Code Sections 227-228 would also result in the determination that a gas station that owns pipelines to store and distribute gas to the public is a pipeline corporation — which the Commission has specifically dismissed as an absurd outcome.¹

As Zenith pointed out in its application, in 1916, when these sections of the Public Utilities Code were enacted, oil terminaling and storage operations were included in the definition of ‘warehousemen’ in Pub. Util. Code Section 239(a) as:

[e]very corporation or person owning, controlling, operating, or managing any building or structure in which property is regularly stored for compensation within this State in connection with or to facilitate the transportation of property by a common carrier or vessel...

In 1955, the Legislature revised the definition of “warehouseman” to expressly exempt those storing, loading, or unloading “liquid petroleum commodities in bulk” from Commission jurisdiction.² The explicit statutory exemption for these activities affirmed the Legislature’s intent that a corporation

¹ See D.91-07-018, 1991 Cal. PUC LEXIS 509 at *58 (“After all, we do not believe anyone would seriously contend that a gas station operator is a ‘pipeline corporation’ subject to our jurisdiction merely because he has pipes in his station which deliver ‘fluid substances except water through pipe lines.’” Citing Pub. Util. Code §§ 227-228).

² Stats. 1955 ch. 1091.

performing oil terminaling and storage services involve the storing, loading, or unloading of liquid petroleum commodities in bulk is a “warehouseman” and not a pipeline corporation.

Then in 1980, the Legislature went further and removed all “warehousemen” from Commission jurisdiction.³ As a result, the word “warehouseman” was deleted from the definition of “public utility” in Pub. Util. Code Section 216 and the definition of warehouseman in Pub. Util. Code Section 239(a) and references thereto were removed from the Code.

To summarize, Zenith falls within the prior statutory definition of warehousemen; the Commission has had no jurisdiction over warehousemen since 1980; therefore, but for the fact that Zenith did not request removal of its public utility designation in conjunction with the sale of the Terminal by Plains, the Commission would have no jurisdiction over Zenith.

In effect, this application asks the Commission to correct an oversight by the Applicant, namely, its failure to request removal of its public utility designation when the terminaling operations were separated from Plains’ pipeline operations. This is an appropriate outcome that accords with the intention of the Legislature in removing warehousemen, including operators of oil storage terminals, from Commission jurisdiction and puts Zenith on the same legal footing as other operators of oil storage terminals.

We therefore grant the requested relief here and find that the Application meets all statutory and Commission requirements; the requested removal of Zenith Terminals’ public utility designation is in the public interest; there is no evidence that the removal of the public utility designation would have any

³ Stats. 1980 ch. 1063 (Senate Bill 1048).

negative impacts on any environmental and social justice community; and there is no evidence of safety issues or concerns.

4. Comments on Proposed Decision

The proposed decision of ALJ Bemesderfer in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

5. Assignment of Proceeding

Darcie L. Houck is the assigned Commissioner in this proceeding and Karl J. Bemesderfer is the assigned ALJ.

Findings of Fact

1. Prior to its purchase by Zenith in 2020, the Terminal was owned and operated by Plains, a Commission regulated pipeline corporation.
2. After purchasing the Terminal from Plains, Zenith filed this application to have its public utility designation removed.
3. There were no protests to the application.
4. Zenith operates an oil storage terminal in Carson, CA.
5. The Carson terminal is connected to customer lines and storage facilities in Los Angeles County through 120 miles of Zenith pipelines.
6. Zenith charges its customers fees for storing their oil.
7. Zenith does not charge its customers fees for transporting their oil to and from the Carson terminal.
8. The Legislature removed oil storage terminals from Commission jurisdiction in 1980.
9. The Application meets all statutory and Commission requirements.

10. There is no evidence that the removal of the public utility designation would negatively impact any environmental and social justice community.

11. There is no evidence of safety issues or concerns.

Conclusions of Law

1. The relief sought in this application to have Zenith's public utility designation removed should be granted.

2. "Pipeline corporation" as defined in Pub. Util. Code Section 228 does not include operators of oil storage terminals.

3. Zenith is not a pipeline corporation.

4. Zenith is not a public utility.

5. The requested removal of Zenith Terminals' public utility designation is consistent with applicable laws and in the public interest.

6. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The application of Zenith Energy West Coast Terminals LLC to have its public utility designation removed is granted.

2. Zenith's Motion for Leave to File Under Seal Confidential Attachments A, B, and C of the Response to Scoping Memo and Ruling Questions filed on February 28, 2022, is granted. Attachments A-C shall remain under seal for a period of two years from the effective date of this decision and shall not be made accessible or disclosed to anyone other than the Commission and its staff, except upon further order or ruling of the Commission.

3. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.